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# HOUSE BILL No. 1837

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-5-0.5-2; IC 27-8-28; IC 34-30-2-116.7.

**Synopsis:** Transfer of structured settlement payment rights. Adds provisions to the Indiana insurance law regulating transfers of payment rights under structured settlement agreements. Defines "structured settlement" as periodic payment of damages established by a settlement or court judgment in resolution of a tort claim for personal injury. Requires certain disclosures and court approval of an agreement to transfer structured settlement payment rights. Specifies express court findings required for approval of a transfer of structured settlement payment rights. Makes conforming amendments.

**Effective:** July 1, 2001.

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January 17, 2001, read first time and referred to Committee on Insurance, Corporations and Small Business.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1837

A BILL FOR AN ACT to amend the Indiana Code concerning courts and consumer protection.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-5-0.5-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) As used in this  
3 chapter:

4 (1) "Consumer transaction" means a sale, lease, assignment,  
5 award by chance, or other disposition of an item of personal  
6 property, real property, a service, or an intangible, except  
7 securities and policies or contracts of insurance issued by  
8 corporations authorized to transact an insurance business under  
9 the laws of the state of Indiana, with or without an extension of  
10 credit, to a person for purposes that are primarily personal,  
11 familial, charitable, agricultural, or household, or a solicitation to  
12 supply any of these things. **However, the term includes a**  
13 **transfer of structured settlement payment rights under**  
14 **IC 27-8-28.**

15 (2) "Person" means an individual, corporation, the state of Indiana  
16 or its subdivisions or agencies, business trust, estate, trust,  
17 partnership, association, nonprofit corporation or organization, or

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cooperative or any other legal entity.

(3) "Supplier" means:

(A) a seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including a manufacturer, wholesaler, or retailer, whether or not he deals directly with the consumer; or

(B) a person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(4) "Subject of a consumer transaction" means the personal property, real property services, or intangibles furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

(6) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

(i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or

(ii) the act has not been cured as to such consumer within a reasonable time after his acceptance of the offer to cure.

(7) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead.

(8) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(9) "Promoting a pyramid promotional scheme" means:

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(A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

(10) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(b) As used in section 3(a)(15) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SECTION 2. IC 27-8-28 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

**Chapter 28. Annuity Structured Settlements**

**Sec. 1. As used in this chapter, "annuity issuer" means an insurer or other entity that enters into an annuity contract or other agreement that is used to fund periodic payments under a structured settlement.**

**Sec. 2. As used in this chapter, "applicable law" means laws of:**

**(1) the United States;**

**(2) Indiana, including principles of equity applied in Indiana courts; and**

**(3) any other jurisdiction if any of the following applies:**

**(A) The laws of the other jurisdiction govern a structured settlement.**

**(B) A court or responsible administrative authority approved a structured settlement agreement under the laws of the other jurisdiction.**

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(C) The transfer of payments under a structured settlement is subject to the laws of the other jurisdiction.

**Sec. 3. As used in this chapter, "dependent" means:**

- (1) the spouse of a payee;
- (2) a minor child of a payee;
- (3) another family member of a payee; or
- (4) another individual;

for whose support a payee is legally obligated.

**Sec. 4. As used in this chapter, "discounted present value" means the fair present value of future payments under a structured settlement, as determined by discounting the future payments to the present using the federal rate most recently issued by the United States internal revenue service to determine the present value of an annuity.**

**Sec. 5. As used in this chapter, "independent professional advice" means the advice of an independent professional advisor, when all of the following apply:**

- (1) The payee has engaged the services of the independent professional advisor concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights.
- (2) The independent professional advisor signs a statement affirming that the independent professional advisor has rendered advice to the payee concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights.
- (3) The compensation of the independent professional advisor is not affected by the occurrence of a transfer of structured settlement payment rights.

**Sec. 6. As used in this chapter, "independent professional advisor" means an attorney, a certified public accountant, or another individual who is not:**

- (1) affiliated with;
- (2) referred by; or
- (3) compensated in any manner by;

a transferee and is qualified to provide advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights.

**Sec. 7. As used in this chapter, "interested party" refers to:**

- (1) the payee;
- (2) the annuity issuer;
- (3) the structured settlement agreement obligor; or

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(4) any other party that has continuing rights or obligations under a structured settlement agreement; with regard to a structured settlement.

Sec. 8. As used in this chapter, "payee" means an individual who:

(1) receives periodic payments that:

(A) are made under a structured settlement agreement; and

(B) may be excluded from the individual's gross income under federal income taxation laws; and

(2) proposes to make a transfer of the rights to receive the periodic payments.

Sec. 9. As used in this chapter, "periodic payments" includes continuing monthly or other regular payments and a scheduled future lump sum payment under a structured settlement.

Sec. 10. As used in this chapter, "qualified assignment agreement" means an agreement that provides for a qualified assignment (as defined in 26 U.S.C.A. 130(c)) through an assignment of the liability under a structured settlement agreement to make periodic payments as damages on account of personal injury.

Sec. 11. As used in this chapter, "responsible administrative authority" means a government authority of another state vested by the law of the other state with the original exclusive jurisdiction over a claim that was resolved through a structured settlement.

Sec. 12. As used in this chapter, "structured settlement" means periodic payments of damages established by a settlement or a court judgment in resolution of a tort claim for personal injury.

Sec. 13. As used in this chapter, "structured settlement agreement" means:

(1) an agreement;

(2) a judgment;

(3) a stipulation; or

(4) a release;

that embodies the terms of a structured settlement, including the rights of a payee to receive periodic payments.

Sec. 14. As used in this chapter, "structured settlement obligor" means the party that has the obligation to make continuing periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

Sec. 15. As used in this chapter, "structured settlement payment rights" means the rights under a structured settlement agreement

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to receive periodic payments from a structured settlement obligor or an annuity issuer if either of the following applies:

- (1) The payee, the structured settlement obligor, or the annuity issuer with respect to the structured settlement agreement is a resident of Indiana.
- (2) The structured settlement agreement was approved by an Indiana court.

Sec. 16. As used in this chapter, "terms of a structured settlement" refers to the terms of:

- (1) a structured settlement agreement;
- (2) a qualified assignment agreement; and
- (3) any order or approval by:
  - (A) a court;
  - (B) a responsible administrative authority; or
  - (C) another government authority;
 authorizing or approving a structured settlement.

Sec. 17. As used in this chapter, "transfer" means a:

- (1) sale;
- (2) assignment;
- (3) pledge;
- (4) hypothecation; or
- (5) any other form of alienation or encumbrance;

of structured settlement payment rights made by a payee for consideration.

Sec. 18. As used in this chapter, "transfer agreement" means an agreement that provides for the transfer of structured settlement payment rights from a payee to a transferee.

Sec. 19. As used in this chapter, "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer agreement.

Sec. 20. A direct or indirect transfer of structured settlement payment rights is not effective, and a structured settlement obligor or annuity issuer is not required to make a payment directly or indirectly to a transferee, unless:

- (1) the transferee provides the payee and other interested parties with the disclosures required under section 21 of this chapter; and
- (2) a court of competent jurisdiction has approved the transfer in a final order in accordance with sections 22 and 23 of this chapter.

Sec. 21. Not less than ten (10) days before the date on which a payee becomes obligated under a transfer agreement, the

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transferee shall provide to the payee a disclosure statement, in boldface type of not less than fourteen (14) points in size, that includes the following:

(1) The amounts and due dates of the structured settlement payments to be transferred under the transfer agreement.

(2) The aggregate amount of the payments disclosed under subdivision (1).

(3) The discounted present value of the payments disclosed under subdivision (1) and the amount of the applicable federal rate used to determine the discounted present value.

(4) The gross amount payable to the payee as consideration for the transfer of the structured settlement payments disclosed under subdivision (1).

(5) An itemized list of all:

(A) commissions;

(B) fees;

(C) costs;

(D) expenses; and

(E) charges;

payable by the payee or deductible from the gross amount payable to the payee, as disclosed under subdivision (4).

(6) The net amount payable to the payee after any deduction is made from the gross amount payable to the payee, as described in subdivision (5).

(7) The quotient, expressed as a percentage, obtained by dividing the net amount payable to the payee, as disclosed under subdivision (6), by the discounted present value of the payments, as disclosed under subdivision (3).

(8) The amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee.

**Sec. 22. An Indiana court of competent jurisdiction may approve a transfer of structured settlement payment rights only in a final order that is based on the express findings of the court. The express findings must include all of the following:**

(1) The transferee has provided to the payee a disclosure statement that complies with section 21 of this chapter.

(2) The payee has confirmed receipt of the disclosure statement referred to in subdivision (1) by the payee's notarized signature on a copy of the disclosure statement.

(3) The payee has determined that the transfer is fair and

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reasonable and in the best interest of the payee and the payee's dependents. However, if, on the effective date of the transfer agreement, a federal hardship standard exists, this requirement is met if the payee has established that the transfer meets the hardship standard.

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer.

(5) If the transfer contravenes the terms of the structured settlement involved, all of the following have occurred:

(A) Each dependent whom the payee is legally obligated to support, in a written approval and waiver, has approved the transfer and waived the right to require that the structured settlement payments be made to the payee in accordance with the terms of the structured settlement.

(B) The court or responsible administrative authority that previously approved the structured settlement has expressly approved the transfer in writing.

(C) The transferee has provided to the court in which the application for approval of the transfer was filed all of the signed original copies of the approvals required under clauses (A) and (B).

(D) The transferee has furnished each interested party copies of the approvals required under clauses (A) and (B).

(6) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of that notice with the court in which the application for approval of the transfer was filed.

(7) The transfer complies with all of the requirements of this chapter and does not contravene any applicable law.

**Sec. 23. (a)** A person must file an application under this chapter for advance approval of a transfer of structured settlement payment rights in:

(1) the Indiana court that approved the structured settlement agreement; or

(2) if the structured settlement agreement was not approved by an Indiana court, the court of general jurisdiction in the Indiana county in which the payee, the structured settlement obligor, or the annuity issuer resides.

**(b)** The following apply to an application filed under subsection (a):



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(1) Upon filing of the application, the court shall set a date and time for a hearing on the application and shall notify the transferee of the date, time, and place of the hearing.

(2) Not less than twenty (20) days before the date set under subdivision (1), the transferee shall file with the court and shall serve on:

(A) the court or the responsible administrative authority that previously approved the structured settlement;

(B) all interested parties;

(C) the annuity issuer; and

(D) the structured settlement obligor;

in the manner prescribed in the rules of civil procedure for the service of process, a notice of the proposed transfer and the application for advance approval.

(3) The notice required under subdivision (2) shall include:

(A) a copy of the application for advance approval;

(B) a copy of the transfer agreement;

(C) a copy of the disclosure statement provided by the transferee under section 21 of this chapter and signed by the payee under section 22 of this chapter;

(D) notification of the date, time, and place of the hearing on the application;

(E) notification that an interested party may support, oppose, or otherwise respond to the application, either in person or by counsel, by:

(i) submitting to the court a written response containing the interested party's support of, opposition to, or comments on the application; or

(ii) participating in the hearing; and

(F) notification:

(i) of the manner of submitting to the court a written response to the application; and

(ii) that a written response must be submitted not more than fifteen (15) days after receipt of the notice required under subdivision (2) in order for the court to consider the written response.

(4) If an interested party wishes to submit a written response under subdivision (3)(E)(i), the interested party shall file the written response with the court:

(A) in person; or

(B) by certified mail, return receipt requested;

not more than fifteen (15) days after receipt of the notice

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described in subdivision (3).

(5) At the conclusion of the hearing on an application filed under subsection (a), the court shall enter an order either:

(A) granting approval; or

(B) denying approval;

of the transfer. If the court grants approval of the transfer, the court shall include in the order all of the express findings required under section 22 of this chapter. If the court denies the approval of the transfer, the court shall include in the order the reasons for the denial.

(6) An order of the court made under subdivision (5) is a final and appealable order.

Sec. 24. (a) A payee who proposes to make a transfer of structured settlement payment rights does not:

(1) incur a penalty;

(2) forfeit an application fee or other payment; or

(3) otherwise incur a liability to the proposed transferee;

if the transfer does not comply with the requirements of this chapter.

(b) A provision of this chapter may not be waived.

(c) This chapter does not:

(1) authorize a transfer of structured settlement payment rights in contravention of applicable law; or

(2) give effect to a transfer of structured settlement payment rights that is void under applicable law.

Sec. 25. After a transfer, a structured settlement obligor and an annuity issuer are immune from liability to a payee, or to a party other than a transferee who is claiming through the payee, for paying structured settlement payments to a transferee if, under section 20 of this chapter:

(1) the transferee has provided the payee and other interested parties with the disclosures required under section 21 of this chapter; and

(2) a court of competent jurisdiction has approved the transfer in a final order in accordance with sections 22 and 23 of this chapter.

Sec. 26. A violation of this chapter by a transferee is a deceptive act under IC 24-5-0.5.

SECTION 3. IC 34-30-2-116.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 116.7. IC 27-8-28-25 (Concerning transfers of structured settlement payment rights).



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1       SECTION 4. [EFFECTIVE JULY 1, 2001] (a) IC 27-8-28, as  
2       added by this act, applies to transfers of structured settlement  
3       payment rights under a transfer agreement that is entered after  
4       June 30, 2001.  
5       (b) This SECTION expires June 30, 2006.

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